



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB1971

Introduced 2/10/2017, by Sen. Omar Aquino

SYNOPSIS AS INTRODUCED:

215 ILCS 5/512-11 new
815 ILCS 510/2

from Ch. 121 1/2, par. 312

Amends the Illinois Insurance Code. Provides regulation for the creation of a list of drugs used to set the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based. Provides that before a pharmacy benefits manager places or continues a particular drug on a maximum allowable cost list, the drug shall meet specified requirements. Provides for the duties of a pharmacy benefits manager in his or her use of a maximum allowable cost list. Provides for a reasonable administrative appeal procedure to allow pharmacies to challenge maximum allowable costs and reimbursements made under a maximum allowable cost for a specific drug. Provides that a pharmacy benefits manager shall not reimburse a pharmacy or pharmacist in this State in an amount less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services. Provides that a pharmacy or pharmacist may decline to provide pharmacist services to a patient or pharmacy benefits manager if, as a result of a maximum allowable cost list, a pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost of the pharmacy providing pharmacist services. Provides that a violation of the provisions concerning maximum allowable cost lists and pharmacy benefits managers is a deceptive trade practice. Amends the Uniform Deceptive Trade Practices Act to make a conforming change. Defines terms.

LRB100 10779 RJF 21010 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by adding
5 Section 512-11 as follows:

6 (215 ILCS 5/512-11 new)

7 Sec. 512-11. Maximum allowable cost list; pharmacy
8 benefits manager.

9 (a) As used in this Section:

10 "Maximum allowable cost list" means a listing of drugs
11 used by a pharmacy benefits manager setting the maximum
12 allowable cost on which reimbursement to a pharmacy or
13 pharmacist may be based.

14 "Pharmaceutical wholesaler" means a person or entity
15 that sells and distributes prescription pharmaceutical
16 products, including, but not limited to, a full line of
17 brand-name, generic, and over-the-counter pharmaceuticals,
18 and that offers regular and private delivery to a pharmacy.

19 "Pharmacy acquisition cost" means the amount that a
20 pharmaceutical wholesaler charges for a pharmaceutical
21 product as listed on the pharmacy's billing invoice.

22 "Pharmacy benefits manager" means an entity that
23 administers or manages a pharmacy benefits plan or program.

1 "Pharmacy benefits manager affiliate" means a pharmacy
2 or pharmacist that directly or indirectly, through one or
3 more intermediaries, owns or controls, is owned or
4 controlled by, or is under common ownership or control with
5 a pharmacy benefits manager.

6 "Pharmacy benefits plan or program" means a plan or
7 program that pays for, reimburses, covers the cost of, or
8 otherwise provides for pharmacist services to individuals
9 who reside in or are employed in this State.

10 (b) Before a pharmacy benefits manager places or continues
11 a particular drug on a maximum allowable cost list, the drug:

12 (1) shall be listed as therapeutically equivalent and
13 pharmaceutically equivalent "A" or "B" rated in the United
14 States Food and Drug Administration's most recent version
15 of the "Orange Book" or "Green Book" or has an NR or NA
16 rating by Medi-Span, Gold Standard, or a similar rating by
17 a nationally recognized reference;

18 (2) shall be available for purchase by each pharmacy in
19 the State from national or regional wholesalers operating
20 in Illinois; and

21 (3) shall not be obsolete.

22 (c) A pharmacy benefits manager shall:

23 (1) provide access to its maximum allowable cost list
24 to each pharmacy subject to the maximum allowable cost
25 list;

26 (2) update its maximum allowable cost list on a timely

1 basis, but in no event longer than 7 calendar days from an
2 increase of 10% or more in the pharmacy acquisition cost or
3 from 60% or more of the pharmaceutical wholesalers doing
4 business in the State, or a change in the methodology on
5 which the maximum allowable cost list is based or in the
6 value of a variable involved in the methodology;

7 (3) provide a process for each pharmacy subject to the
8 maximum allowable cost list to receive prompt notification
9 of an update to the maximum allowable cost list; and

10 (4) provide a reasonable administrative appeal
11 procedure to allow pharmacies to challenge maximum
12 allowable costs and reimbursements made under a maximum
13 allowable cost for a specific drug or drugs as: (A) not
14 meeting the requirements of this Section or (B) being below
15 the pharmacy acquisition cost. The reasonable
16 administrative appeal procedure shall include: (i) a
17 dedicated telephone number and email address or website for
18 the purpose of submitting administrative appeals; (ii) the
19 ability to submit an administrative appeal directly to the
20 pharmacy benefits manager regarding the pharmacy benefits
21 plan or program or through a pharmacy service
22 administrative organization; and (iii) no less than 7
23 business days to file an administrative appeal.

24 (d) The pharmacy benefits manager shall respond to the
25 challenge under paragraph (4) of subsection (c) within 7
26 business days after receipt of the challenge. If a challenge is

1 under paragraph (4) of subsection (c), the pharmacy benefits
2 manager shall within 7 business days after receipt of the
3 challenge either:

4 (1) if the appeal is upheld:

5 (A) make the change in the maximum allowable cost;

6 (B) permit the challenging pharmacy or pharmacist
7 to reverse and rebill the claim in question;

8 (C) provide the National Drug Code number that the
9 increase or change is based on to the pharmacy or
10 pharmacist; and

11 (D) make the change under subparagraph (A) of this
12 paragraph (1) effective for each similarly situated
13 pharmacy as defined by the payor subject to the maximum
14 allowable cost list;

15 (2) if the appeal is denied, provide the challenging
16 pharmacy or pharmacist the National Drug Code number and
17 the name of the national or regional pharmaceutical
18 wholesalers operating in Illinois that have the drug
19 currently in stock at a price below the maximum allowable
20 cost list; or

21 (3) if the National Drug Code number provided by the
22 pharmacy benefits manager is not available below the
23 pharmacy acquisition cost from the pharmaceutical
24 wholesaler from whom the pharmacy or pharmacist purchases
25 the majority of prescription drugs for resale, then the
26 pharmacy benefits manager shall adjust the maximum

1 allowable cost list above the challenging pharmacy's
2 pharmacy acquisition cost and permit the pharmacy to
3 reverse and rebill each claim affected by the inability to
4 procure the drug at a cost that is equal to or less than
5 the previously challenged maximum allowable cost.

6 (e) A pharmacy benefits manager shall not reimburse a
7 pharmacy or pharmacist in this State in an amount less than the
8 amount that the pharmacy benefits manager reimburses a pharmacy
9 benefits manager affiliate for providing the same pharmacist
10 services. The amount shall be calculated on a per unit basis
11 based on the same generic product identifier or generic code
12 number.

13 (f) A pharmacy or pharmacist may decline to provide
14 pharmacist services to a patient or pharmacy benefits manager
15 if, as a result of a maximum allowable cost list, a pharmacy or
16 pharmacist is to be paid less than the pharmacy acquisition
17 cost of the pharmacy providing pharmacist services.

18 (g) A violation of this Section is a deceptive trade
19 practice under Section 2 of the Uniform Deceptive Trade
20 Practices Act.

21 Section 10. The Uniform Deceptive Trade Practices Act is
22 amended by changing Section 2 as follows:

23 (815 ILCS 510/2) (from Ch. 121 1/2, par. 312)

24 Sec. 2. Deceptive trade practices.

1 (a) A person engages in a deceptive trade practice when, in
2 the course of his or her business, vocation, or occupation, the
3 person:

4 (1) passes off goods or services as those of another;

5 (2) causes likelihood of confusion or of
6 misunderstanding as to the source, sponsorship, approval,
7 or certification of goods or services;

8 (3) causes likelihood of confusion or of
9 misunderstanding as to affiliation, connection, or
10 association with or certification by another;

11 (4) uses deceptive representations or designations of
12 geographic origin in connection with goods or services;

13 (5) represents that goods or services have
14 sponsorship, approval, characteristics, ingredients, uses,
15 benefits, or quantities that they do not have or that a
16 person has a sponsorship, approval, status, affiliation,
17 or connection that he or she does not have;

18 (6) represents that goods are original or new if they
19 are deteriorated, altered, reconditioned, reclaimed, used,
20 or secondhand;

21 (7) represents that goods or services are of a
22 particular standard, quality, or grade or that goods are a
23 particular style or model, if they are of another;

24 (8) disparages the goods, services, or business of
25 another by false or misleading representation of fact;

26 (9) advertises goods or services with intent not to

1 sell them as advertised;

2 (10) advertises goods or services with intent not to
3 supply reasonably expectable public demand, unless the
4 advertisement discloses a limitation of quantity;

5 (11) makes false or misleading statements of fact
6 concerning the reasons for, existence of, or amounts of
7 price reductions;

8 (12) engages in any other conduct which similarly
9 creates a likelihood of confusion or misunderstanding; or -

10 (13) engages in conduct as a pharmacy benefits manager
11 that is in violation of Section 512-11 of the Illinois
12 Insurance Code.

13 (b) In order to prevail in an action under this Act, a
14 plaintiff need not prove competition between the parties or
15 actual confusion or misunderstanding.

16 (c) This Section does not affect unfair trade practices
17 otherwise actionable at common law or under other statutes of
18 this State.

19 (Source: P.A. 92-16, eff. 6-28-01)